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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 23 October 2009 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum on the situation of human rights in the Union of Myanmar.

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly under agenda item 69 (c).

(*Signed*) Than **Swe**
Permanent Representative

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Annex to the letter dated 23 October 2009 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Memorandum on the situation of human rights in the Union of Myanmar

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I. Introduction

1. The General Assembly on 24 December 2008 passed resolution 63/245, "Situation of human rights in Myanmar". Myanmar considers the resolution to be procedurally and factually flawed.

2. In terms of procedure the country-specific resolution is misplaced. It contravenes the letter and spirit of the General Assembly resolution creating the universal periodic review. With the creation of the universal periodic review mechanism the Human Rights Council is now in a position to undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each Member State of the United Nations of its human rights obligations and commitments in a manner which ensures universality of coverage. The Human Rights Council has already adopted a calendar detailing the order in which all 192 United Nations Member States will be considered during the first four-year cycle of the universal periodic review (2008-2011). The situation in Myanmar is scheduled for review in 2011

3. With regard to the facts, the resolution initiated by the European Union is inaccurate. It is not based on information from reliable sources but rather on unsubstantiated accounts provided by those who oppose the Government.

4. Human rights can best be promoted through understanding rather than through country-specific resolutions. This memorandum is being circulated to provide information on the situation obtaining in Myanmar.

II. Brief political background of Myanmar

5. Myanmar is a multi-ethnic, multi-religious country and is home to eight major ethnic groups comprising over 100 ethnic nationalities. It is situated in a strategic part of the Asian continent and is surrounded by countries with different political systems, cultures and religions. Its five neighbours include the world's two most populous countries, China and India. The challenges faced by Myanmar are therefore complex. The Government of Myanmar has to ensure harmony and maintain close and harmonious relations with her neighbours based on the five principles of peaceful coexistence. The unique circumstances of Myanmar should be taken into account whenever its situation is considered.

6. Myanmar opted for parliamentary democracy at independence in 1948. However, as the system did not live up to expectations it switched to socialism in 1974. Subsequently, in 1988, the socialist system was replaced with a multiparty system and a market-oriented economy.

7. As national unity is vital for the country, the Government has been striving to promote it. Peace overtures have resulted in the return to the legal fold of 17 out of 18 major armed insurgent groups. The door is still left open for the remaining armed group.

8. Now that peace and stability prevails in the country, the Government is focusing on the political, economic and social development of the country. A seven-step road map for transition to democracy was initiated in 2003. The general elections, the fifth step of the seven-step road map, are scheduled for 2010. Systematic steps are being taken to hold free and fair elections. Electoral laws will

be promulgated and the election commission formed so that political parties can contest the elections and State power can be handed over systematically to a government in keeping with the Constitution.

III. Cooperation with the United Nations

9. Cooperation with the United Nations is a cornerstone of Myanmar's foreign policy. It is in this spirit that Myanmar has been consistently cooperating with the United Nations in various fields, including in the field of human rights. Myanmar provides necessary information to United Nations bodies and submits reports to relevant United Nations treaty bodies.

10. Myanmar's engagement with the United Nations is reflected in the high-level visits to Myanmar of senior United Nations officials headed by the Secretary-General himself. Secretary-General Ban Ki-moon, visited Myanmar twice. His first visit took place soon after Cyclone Nargis hit Myanmar in 2008. He took part in the pledging conference and inspected the storm-affected areas. He returned a year later and witnessed first-hand the success of the cooperation by the Government of Myanmar, the United Nations and the Association of Southeast Asian Nations (ASEAN) in carrying out relief, rehabilitation and reconstruction work. During his last visit, he met twice with Senior General Than Shwe, the Chairman of the State Peace and Development Council as well as representatives of all 10 registered political parties and the seven ceasefire groups.

11. Special Adviser to the Secretary-General Mr. Ibrahim A. Gambari and other special envoys have visited Myanmar numerous times. Special Rapporteurs for Myanmar Prof. Paulo Sergio Pinheiro and Mr. Tomás Ojea Quintana, too, have been invited to Myanmar. Ms. Margareta Wahlström, Assistant Secretary-General for Disaster Risk Reduction, Ms. Radhika Coomaraswamy, Special Representative of the Secretary-General for Children and Armed Conflict, Mr. John Holmes, Under-Secretary-General for Humanitarian Affairs, Ms. Josette Sheeran, Executive Director of the World Food Programme, Mr. Kari Tapiola, an executive director of the International Labour Organization (ILO), Mr. Antonio Guterres, United Nations High Commissioner for Refugees, and Dr. Noeleen Heyzer, Executive Secretary of the Economic and Social Commission for Asia and the Pacific, are among the senior officials of the United Nations who have been to Myanmar between 2007 and 2009 at the invitation of the Myanmar Government.

12. The Myanmar Government extended full cooperation to Mr. Gambari during his visits to Myanmar. On his visit from 31 January to 3 February 2009, he not only had the opportunity to meet with senior government officials but also those from the political, social and economic spheres. Moreover, he had the opportunity to meet Daw Aung San Suu Kyi together with the members of the Central Executive Committee of the National League for Democracy (NLD) party. Prime Minister General Thein Sein also received him. In response to his request for the release of prisoners on humanitarian grounds, a total of 6,313 prisoners were granted amnesty on 20 February 2009 and a further 7,114 prisoners on 17 September 2009. Those released will be able to participate in the general elections next year in accordance with the law. The Government keeps the door open for a dialogue with Daw Aung San Suu Kyi, and Minister for Relations U Aung Kyi met and held talks with her on 3 and 7 October 2009.

IV. Combating illegal narcotic drugs

13. Myanmar has been waging a war against illicit narcotic drugs for decades. A comprehensive 15-year National Plan was put in place in 1999. National efforts against drugs are based on two strategies: first, to strive for the eradication of narcotic drugs as a national task and, second, to strive for the elimination of poppy cultivation through the promotion of the living standards of the national races residing in the border areas. These strategies are buttressed by strengthened legislation and effective law enforcement.

14. As a result of Myanmar's anti-narcotic endeavours, poppy cultivation decreased by 83 per cent between 1998 and 2009. Moreover, we have been able to declare opium-free zones in the Mongla, Kokang and Wa regions, the largest poppy-growing areas in the country. Myanmar aims to rid the country of narcotic drugs by 2014, one year ahead of the date set by ASEAN.

V. Promotion and protection of human rights

15. The promotion and protection of human rights must be addressed in the global context through a constructive, dialogue-based and non-confrontational approach. It is cooperation, rather than politicization of human rights, that can bring about improvements in human rights situations around the world. Myanmar strongly supports the position of the Non-Aligned Movement, which opposes and condemns selectivity and double standards in the promotion and protection of human rights, and the exploitation of human rights for political purposes.

16. Myanmar accords priority to the right to development and has been striving for the all-round development of the country.

17. The allegations of human rights violations invariably emanate from anti-Government elements. It is unfortunate that they have found their way into United Nations reports. Information should be thoroughly checked and verified before inclusion in official documents.

VI. Allegations regarding internally displaced persons

18. Peace and stability have been restored in the country with the return of 17 armed groups to the legal fold.

19. The issue of cross-border movement of peoples between Myanmar and Bangladesh is being addressed amicably between the two countries. With regard to the boat people in the Bay of Bengal, Myanmar has declared its willingness to cooperate with the countries in the region to find a solution. It is prepared to receive all those who provide proof that they are indeed from Myanmar.

20. In August 2009, the Government had to take action in the Shan State Special Administration Region 1 (Kokang) to enforce the law prohibiting the production and trafficking of illegal arms and ammunition and to prevent trafficking in illegal drugs and psychotropic substances. As a result, those who committed the offences fled the area. The situation has now returned to normal.

VII. Child soldiers

21. The Myanmar Armed Forces is an all-volunteer army. Those who enlist in the military do so of their own volition. Under Myanmar Defence Services and War Office Council instructions, individuals are not permitted to enlist in the armed forces until they have attained the age of 18. Forced conscription in any form is strictly prohibited. The Committee for the Prevention of Military Recruitment of Underage Children was established on 5 January 2004 and has been tasked to prevent recruitment of children, to protect the interests of underage children and to ensure faithful adherence to the orders and instructions for the protection of underage children. The Committee has adopted a Plan of Action to strictly ensure that children under 18 years of age are not recruited into the armed forces. The Committee has also set up a task force composed of the relevant line ministries, such as the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Labour and the Ministry of Social Welfare, Relief and Resettlement, to systematically supervise implementation of the Plan of Action.

22. In order to raise awareness among those who are involved in the recruitment process, the Government of Myanmar, UNICEF and NGOs are conducting workshops on the protection and promotion of child rights, and the directives and regulations governing the recruitment process. New recruits found to be underage are discharged and returned to their parents or guardians. Punitive action is taken against recruiters who contravene regulations. The Government has been providing detailed information regarding the progress of its awareness-raising activities, the number and specific particulars of the underage children discharged from the military and other pertinent data to the United Nations country team and to the Office of the Special Representative of the Secretary-General for Children and Armed Conflict. The addresses of the discharged recruits have been included in the list for ease of verification and follow-up activities by the United Nations country team.

23. Since the first visit to Myanmar by the Special Representative of the Secretary-General for Children and Armed Conflict, Ms. Radhika Coomaraswamy, a series of follow-up measures have been taken to address the question of child soldiers. At her request and pursuant to Security Council resolution 1612 (2005), a national focal point was established and a working group was formed in September 2007, headed by the Director-General of the Ministry of Foreign Affairs. The Government's Monitoring and Reporting Task Force is cooperating with the United Nations country task force to update its existing Action Plan to be in line with international standards. In August 2009, the Myanmar Government received a technical briefing team from the Office of the Special Representative of the Secretary-General for Children and Armed Conflict to finalize the Action Plan. The Government has introduced a Finger Print Identifying Control System database at four major recruitment centres with a view to preventing the recruitment of underage children into the military.

24. A total of 185 underage children were returned to their guardians between 2006 and 31 May 2009. Disciplinary action has also been taken against 47 military personnel. In February 2009, the military Judge Advocate-General issued a reminder that severe action would be taken against those who recruit underage children.

25. Six armed groups that have come back to the legal fold, namely, the Democratic Karen Buddhist Army (DKBA), the Kachin Independence Organization (KIO/KIA), the Karenni National People's Liberation Front (KNPLF), the Myanmar National Democratic Alliance Party, the Karen National Union-Karen National Liberation Army (KNU-KNLA) Peace Council and the United Wa State Army (UWSA) have openly committed themselves not to recruit child soldiers.

VIII. Trafficking in persons

26. Myanmar has achieved considerable progress in its fight against human trafficking at both national and regional levels. The Penal Code, which provides heavy penalty against perpetrators, has been buttressed by the Anti-Human Trafficking Law enacted in September 2005. Under the law, the Central Body for the Prevention and Suppression of Human Trafficking, headed by the Minister for Home Affairs, and three working groups assigned with specific functions have been established to address human trafficking.

27. Myanmar is also participating in the regional anti-human trafficking process known as the Bali process. To strengthen multisectoral response to the human trafficking question in the Greater Mekong subregion an agreement was signed in Yangon in October 2004 in the context of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT).

28. Myanmar is a party to the United Nations Convention against Transnational Organized Crime and its two protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. Recently, a bilateral memorandum of understanding on the prevention of human trafficking was signed with Thailand.

IX. Violence against women

29. Myanmar's traditions and culture provide protection for women and girls from abuse, including sexual and gender-based violence. NGOs, such as the Myanmar Women Affairs Federation (MWAF), work actively to ensure that violence is not perpetrated against women. The allegations of sexual violence and gang rape invariably emanate from insurgent groups. Rape is severely punishable under the Penal Code and regarded as an abhorrent crime by Myanmar people. Gang rape is, therefore, an outrage and unimaginable in Myanmar.

30. As the new Constitution of Myanmar has been approved the Office of the Attorney-General has sent out the existing 342 domestic laws to various concerned ministries to review whether those laws are in conformity with the provisions of the new Constitution and Myanmar's international obligations under the conventions and treaties to which Myanmar is a party, such as the Convention on the Elimination of All Forms of Discrimination against Women.

X. Allegations of forced labour

31. Myanmar and ILO have enjoyed cooperative relations since Myanmar joined the organization in 1948. After four decades, Myanmar's traditional practice of contributing labour for community development activities was questioned by ILO. The issue was brought before ILO by anti-Government action under the mantle of free trade unions. Notwithstanding the measures taken by ILO, Myanmar continues to demonstrate its firm commitment to the eradication of forced labour in the country. It is working with ILO to foster mutually beneficial cooperation.

32. In February 2007, the Myanmar Government and ILO reached agreement on the establishment of a mechanism to address forced labour. The agreement has been implemented to the mutual satisfaction of the Government and ILO. The mechanism to deal with forced labour complaints is now fully operational.

XI. Religious tolerance

33. Buddhism is the religion of the majority of the people of Myanmar. However, other religions, such as Christianity, Islam and Hinduism, coexist and flourish in Myanmar. Freedom of worship is guaranteed by law and in practice. In major cities, pagodas, churches, mosques and Hindu temples can be seen side by side, testifying to the religious harmony and tolerance in Myanmar. Allegations of religious intolerance in Myanmar are groundless and are politically motivated. In respect to religious tolerance, knowledgeable observers consider it to be model.

XII. Economic and social development

34. The Government has devoted significant resources to develop the health, education and transportation sectors. With a view to narrowing the gap between rural and urban areas, the Government has been implementing the three National Development Programmes, namely (i) the Border Areas Development Programme; (ii) the Plan for 24 Special Development Zones; and (iii) the Integrated Rural Development Plan.

35. Sanctions against Myanmar are unwarranted. They are not only unjust but immoral. They deprive the people of their right to development.

XIII. Recent developments in Myanmar

A. Relief and rehabilitation in the aftermath of Cyclone Nargis

36. Cyclone Nargis, which hit the Ayeyarwaddy Delta, was the worst natural disaster in Myanmar's history. It resulted in extensive loss of life and property. The Government worked closely with the international community to provide assistance to the affected families and communities. Due to these efforts, Myanmar was able to overcome the emergency situation and prevent the outbreak of diseases. A tripartite core group, comprising high-level representatives of the Government of Myanmar, ASEAN and the United Nations, was established to coordinate relief efforts and to conduct a post-cyclone joint assessment. The success of the Tripartite Core Group

demonstrates Myanmar's willingness and ability to work with the international community.

37. On 9 February 2009, the Tripartite Core Group launched the Post-Nargis Response and Preparedness Plan, a three-year plan to guide recovery efforts following Cyclone Nargis. The recovery needs amount to US$ 691 million over the next three years. To date, only half of that amount has been committed by the international community. If more funds are forthcoming and donors fulfil their pledges, the rehabilitation process would be speedier and more effective.

B. Adoption of the new State Constitution

38. The new State Constitution was passed by 92.48 per cent of the total eligible voters in the referendum held on 10 May 2008.

39. The Constitution provides for a bicameral legislature and a presidential system of governance. The President will be elected by a presidential electoral college. The State will be composed of seven states, seven regions, five self-administered zones and one self-administered division. Nay Pyi Taw, the Capital, would be designated a Union territory. In keeping with the state structure, the Constitution also establishes 14 state and regional legislative bodies.

40. The Constitution has been drafted in accordance with the principles of constitutional law. In drafting the instrument, the drafters studied the constitutions of other countries. They also followed the Basic Principles and Detailed Basic Principles laid down by the National Convention reflecting the views presented by people from different strata of life in Myanmar.

41. The Constitution contains various legal aspects of constitutional law found in the constitutions of other countries. It contains Basic Principles of the Union, State Structure, Legislature, Executive, Judiciary, Defence Services, Citizens, Fundamental Rights, Duties of Citizens, Elections, Political Parties, Provisions for State Emergency, Amendment of the Constitution, State Flag, State Seal, National Anthem, the Capital, Transitory Provisions and General Provisions.

42. With regard to the Legislature, the Pyidaungsu Hluttaw[1] would be the principal organ. It would consist of the Pyithu Hluttaw[2] and the Amyotha Hluttaw.[3] The Pyithu Hluttaw will consist of 440 representatives and the Amyotha Hluttaw of 224 representatives. The representatives of the Pyithu Hluttaw and Amyotha Hluttaw will take turns for the speakership of the Pyidaungsu Hluttaw for two and a half years. The functions of the Hluttaws are in accordance with international standards and norms.

43. The Executive Head of the Union is the President. The Union Government will consist of the President, two Vice Presidents, the Ministers of the Union and the Attorney General of the Union.

44. In the Judiciary, there will be three levels of court in the Union. First, there will be the Supreme Court with its High Court of Regions and State, Court of Self-

[1] National Assembly.
[2] Equivalent to the lower house in similar systems.
[3] Equivalent to the upper house in similar systems.

Administered Divisions, Court of Self-Administered Zones, District Courts, Township Courts and the other Courts constituted by law. These courts will adjudicate in accordance with their own law without affecting the powers of the courts at the second and third levels. Secondly, the Courts Marshal will be constituted in accordance with the Constitution and the other laws and adjudicate with regard to defence personnel. Thirdly, the Constitutional Tribunal will have its own jurisdiction and have the duty to interpret the provisions of the Constitution and oversee whether the laws promulgated by the Pyidaungsu Hluttaw, the Region Hluttaw and Self-Administered Division Treaty Bodies and Self-Administered Zone Treaty Bodies are in conformity with the Constitution. It is not an executive body that interprets the Constitution or vets the laws promulgated. As in many legal systems, it is the Supreme Court that interprets law when application is made in a case. The Supreme Court interprets the law through case law.

45. A step by step mechanism is also provided for important ingredients of the Constitution, for example, State of Emergency. It empowers the President to make an ordinance and allows the administration of a particular place or the country be given to a body. The same would apply should there be danger of the Union disintegrating, should national solidarity be threatened or should there be a cause for loss of sovereignty. In both cases, the President, after coordinating with the National Defence and Security Council, shall promulgate an ordinance and declare a state of emergency which shall be subsequently approved by the Pyidaungsu Hluttaw at its next session. The duration of the ordinance would be for a year, after which a report would be made by the body to whom the power to administer is entrusted, e.g. the Commander in Chief of the Armed Forces.

46. Strict Codes of Conduct are also present under the Constitution. Whenever military personnel are transferred as ministers to ministries to perform their duties, they will be accountable to the President in the performance of all their duties. If there be misconduct, they shall be subject to both military law and civilian law, whereas civilian ministers will be subject only to impeachment.

XIV. Conclusion

47. Myanmar today is at a critical stage in its history. A new Constitution has been approved by 92.48 per cent of eligible voters. A democratic State aspired to by its people will emerge after the general elections in 2010. The Government of Myanmar has had to undertake a long journey and overcome formidable challenges. It is pursuing a policy of national reconciliation. It has been making relentless efforts to achieve social and economic progress. Progress would have been greater had it not been subjected to undue pressures, ranging from unilateral sanctions to the country-specific resolutions on Myanmar. Notwithstanding this, Myanmar today remains on track. The general elections, the fifth step of its road map, will be held in 2010 as declared. The Government has given full assurances that they will be free and fair, and necessary steps are being taken for the elections. All citizens, regardless of their political affiliations, will have the right to form political parties, conduct campaigns and contest the elections. At this juncture, Myanmar needs the understanding and cooperation of the international community, rather than pressure and resolutions that are prescriptive.